

U.S. DEPARTMENT OF ENERGY

NEVADA OPERATIONS OFFICE

MANUAL

NV M 540.X1

Approved: 1-21-99
Review Date: 1-21-01

Subject: DOE/NV MEMORANDUMS OF UNDERSTANDING AND MEMORANDUMS OF AGREEMENT

1. OBJECTIVES. The objective of this Manual is to establish consistent policies, procedures, and responsibilities for the preparation and execution of Memorandums of Understanding (MOU) and Memorandums of Agreement (MOA).
2. CANCELLATION. None.
3. APPLICABILITY.
 - a. DOE/NV Elements. All DOE Nevada Operations Office (DOE/NV) Elements are to follow this Manual when engaged in the development and/or revision, coordination, and sunset review of MOUs/MOAs as defined in Section 7, Definitions.
 - b. Exclusions. The provisions of this Manual do not apply to documents establishing legally binding commitments or obligations, or permitting the transfer of funds set forth in:
 - (1) International agreements executed by DOE/NV even though such documents may be titled "Memorandum of Understanding."
 - (2) Contracts, grants, cooperative agreements, loan guarantees, and similar instruments.
 - (3) Interagency agreements.
4. REQUIREMENTS. The following are procedures to be used in developing, revising, and executing DOE/NV MOUs/MOAs. These procedures are summarized in the flowchart shown in Appendix 1. An MOU/MOA is not a legally binding contract. It shall not be used to establish policy, but shall reflect existing DOE/NV

INITIATED BY:
Contracts Management Division

policies. An MOU/MOA cannot be used to obligate or commit funds or serve as the basis for the transfer of funds. An interagency agreement, contract, or other applicable contractual agreement shall be used if funding is required to perform work identified in the DOE/NV MOU/MOA. Agreements dealing with matters having an agency-wide impact or effect shall be signed by DOE Headquarters (DOE/HQ). The time period for these agreements shall not be greater than 5 years from the effective date.

a. MOU/MOA Preparation.

- (1) Prior to entering into any discussion for an MOU/MOA, the initiating DOE/NV organization shall coordinate with the Office of Chief Counsel (OCC) to ensure that all arrangements and understandings to be included in the MOU/MOA are consistent with applicable laws and regulations, and with current and planned Departmental policies, programs, and budgets.
- (2) The initiating organization may obtain guidance, examples, and assistance from the Contracts Management Division (CMD).
- (3) The initiating DOE/NV organization shall draft the proposed MOU/MOA in accordance with the format as described below and the checklist shown in Appendix 2.
- (4) The initiating organization shall provide the draft copy of the MOU/MOA to CMD for review, coordination, and tracking number assignment.

b. MOU/MOA Format and Content. The following outline shall be used in preparing an MOU/MOA.

- (1) Introduction.
 - (a) Background. Cite the interests or responsibilities of each organization, including a summary of pertinent statutes and legislative direction.
 - (b) Purpose. Briefly state the purpose.
- (2) Agreement. State the roles and responsibilities of participating parties.

- (3) Program Funding. Insert the applicable clauses as specified below in the MOU/MOA:
- (a) Clause I (Required). "This MOU/MOA shall not be used to obligate or commit funds or as the basis for the transfer of funds."
 - (b) Clause II (Conditional). This clause must be included if the Department of Energy (DOE) receives funds for performing work for another federal or nonfederal organization. Required wording:

"Goods or services that DOE provides to other federal agencies and nonfederal organizations will be invoiced on an actual cost basis consistent with the requirements of the Economy Act, 31 U.S.C. 1535, and other DOE policy. Such costs include the allowable costs incurred by DOE cost-type contractors who are utilized to provide these goods or services. The estimated cost of the work and the actual cost billings during the period of performance will not include any contingencies for unanticipated costs or reflect costs which cannot be determined prior to the normal completion of the work. Such costs may include, but are not limited to, worker's compensation claims or litigation expenses arising after the period of performance. It is agreed and understood that any such allowable costs incurred as a result of this agreement remain the obligation and responsibility of the sponsoring organization since DOE is prohibited from using DOE appropriated funds to pay the cost of non-DOE work."
- (4) Administration.
- (a) Effective Date. "This MOU/MOA shall become effective upon the latter date of signature of both parties. It shall remain in effect for a 5-year term from the effective date unless otherwise terminated."
 - (b) Amendments. "This MOU/MOA may be amended by written agreement between DOE and the other party (or parties)."
 - (c) Termination. This MOU/MOA may be terminated by the mutual written agreement of DOE and the other party (or parties), or by either party upon 60-day written notice to the other party."

c. MOU/MOA Review.

- (1) CMD shall provide OCC and the Financial Services Division (FSD) with a draft copy of all new or revised MOUs/MOAs in order to implement administrative review of the proposed MOU/MOA.
- (2) FSD shall review DOE/NV MOUs/MOAs to ensure that funding is not being committed or obligated and that the document is not being used as a basis for the transfer of funds and respond to CMD with any comments.
- (3) OCC shall conduct a legal review of all DOE/NV MOUs/MOAs and respond to CMD with any comments to:
 - a. Ensure that authorities (statutes, regulations, orders, letters from DOE/HQ) cited are correct, current, and appropriate.
 - b. Ensure the content of the MOU/MOA is consistent with the authorities cited.
 - c. Ensure that the MOU/MOA does not make promises (funding, property transfers, or other activities) that properly belong in a contract or other agreement.
- (4) CMD shall review the preparation checklist (Appendix 2) along with comments from FSD and OCC, and provide the initiating DOE/NV organization with recommendations for revisions to the draft MOU/MOA if deemed necessary.

d. MOU/MOA Approval.

- (1) The initiating organization shall negotiate and resolve comments from CMD, OCC, and FSD and provide CMD with the revised copy for coordination. CMD shall obtain necessary concurrences and signature of the DOE/NV Manager and provide this copy to the initiating organization.
- (2) The initiating organization shall obtain concurrence from signatories external to DOE/NV. Once signed, the initiating organization shall provide CMD with the executed original MOU/MOA and amendments,

along with an Award Information Management System (AIMS) form (Appendix 3).

- (3) The initiating organization shall forward signed copies of executed MOUs/MOAs and amendments to interested or affected organizations. The programmatic office has the responsibility of retaining copies of MOUs/MOAs requiring limited access and classified programs.

e. Periodic Reviews of Existing MOUs/MOAs.

- (1) The initiating DOE/NV organization is responsible for conducting a review every 3 years of MOUs/MOAs under their cognizance in order to determine whether the MOUs/MOAs remain current and/or should remain in force.
- (2) If significant changes need to be addressed, the initiating DOE/NV organization must draft a new MOU/MOA which will supersede the existing document and return Triennial Review Sheet to CMD.
- (3) If the initiating office determines that MOUs/MOAs should be retained, then a copy of the Triennial Review Sheet (Appendix 4) should be completed and returned to CMD.
- (4) If the initiating office determines that the MOUs/MOAs should be terminated, then a copy of the MOU/MOA Triennial Review Sheet must be completed stating the condition and returned to CMD.

5. RESPONSIBILITIES.

- a. DOE/NV Manager. Approves DOE/NV MOUs/MOAs in support of DOE/NV programs and delegates authority to carry them out.
- b. Assistant Manager(s).
 - (1) Assigns responsibilities to DOE/NV Division Directors to initiate DOE/NV MOUs/MOAs for their program/functional areas.
 - (2) Concurs on all DOE/NV MOUs/MOAs for their program/functional areas.

- c. Office of Chief Counsel. Reviews and provides concurrence of all MOUs/MOAs to ensure authorities cited are correct, current, and appropriate and the content of the MOU/MOA is consistent with the authorities cited. Also ensures the MOU/MOA does not make promises that properly belong in a contract.
- d. Division Director(s).
 - (1) Identifies, coordinates, negotiates, and administers MOUs/MOAs for their program/functional areas (to the extent practicable, to avoid duplication of existing MOU/MOAs).
 - (2) Ensures the MOU/MOA is signed by the signatory(ies) external to DOE/NV.
 - (3) Retains a copy of all executed DOE/NV MOUs/MOAs and amendments for their program area and distributes copies to appropriate parties.
 - (4) Forwards the signed original MOU/MOA and amendments, along with a completed AIMS form to CMD.
 - (5) Reviews MOUs/MOAs under their cognizance every 3 years in order to determine if the MOUs/MOAs should be retained or terminated.
- e. Contracts Management Division.
 - (1) Provides advice, guidance, and assistance to Division Directors responsible for drafting and negotiating DOE/NV MOUs/MOAs.
 - (2) Identifies possible conflicts with or duplication of existing MOUs/MOAs prior to execution.
 - (3) Updates and maintains an inventory of all current MOUs/MOAs.
 - (4) Coordinates the review and approval of all proposed or revised MOUs/MOAs.
 - (5) Reviews and tracks termination dates and notifies responsible program official within 90 days of triennial review and expiration of MOUs/MOAs.
 - (6) Maintains official MOU/MOA files with original executed documents.

- f. Financial Services Division. Conducts a financial review to ensure funds are not being committed or obligated or the document is not being used as a basis for the transfer of funds, and provides concurrence on all MOUs/MOAs.

**DOE/NV MEMORANDUMS OF UNDERSTANDING AND
MEMORANDUMS OF AGREEMENT**

7 (and 8)

6. CONTACT. The Point of Contact is located in CMD and can be reached at (702) 295-2298.

7. DEFINITIONS.

- a. Contract. A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.
- b. Memorandums of Agreement. A nonlegally binding document containing cooperative working arrangements between DOE/NV and other DOE Elements.
- c. Memorandums of Understanding.

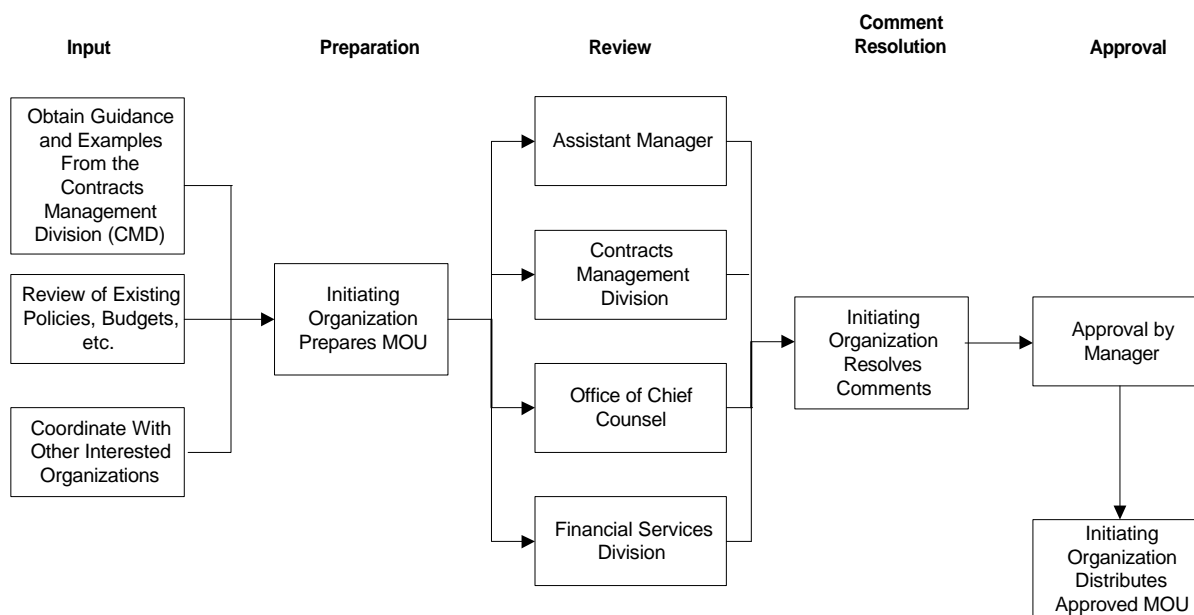
A nonlegally binding document containing cooperative working arrangements between DOE/NV and any of the following:

- Non-DOE Federal agencies
- Local, State, Tribal government entities
- Private sector
- Educational institutions

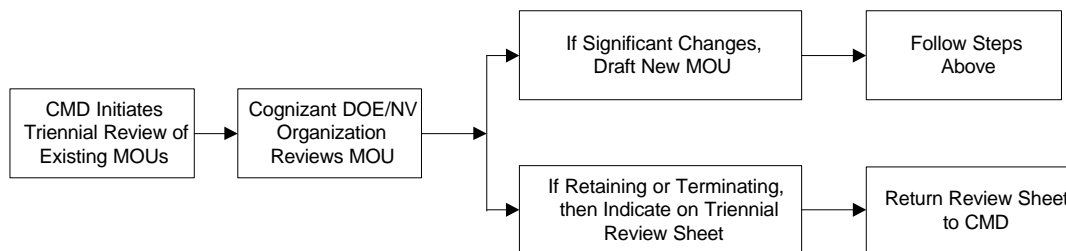
G. W. Johnson
Manager

**DOE NEVADA OPERATIONS OFFICE (DOE/NV)
MEMORANDUM OF UNDERSTANDING (MOU/
MEMORANDUM OF AGREEMENT
PROCESS FLOWCHART**

Preparation



Review



**DOE NEVADA OPERATIONS OFFICE (DOE/NV)
MEMORANDUM OF UNDERSTANDING (MOU)/
MEMORANDUM OF AGREEMENT (MOA) CHECKLIST**

Yes No

- | | | |
|-----|-----|---|
| ___ | ___ | 1. Meets the definition of an MOU/MOA? |
| ___ | ___ | 2. Tracking number placed on the MOU/MOA? |
| ___ | ___ | 3. Award Information Management System form completed and submitted to the Contracts Management Division (CMD)? |
| ___ | ___ | 4. Manager's name on the signature block of the MOU/MOA? |
| ___ | ___ | 5. Cover letter attached to the MOU/MOA? |
| ___ | ___ | 6. CMD, Financial Services Division, Office of Chief Counsel, and all pertinent program offices listed to concur? |
| ___ | ___ | 7. CMD designated on the document to receive a copy of the MOU/MOA. |
| ___ | ___ | 8. Agreement consistent with applicable laws, regulations, current, and planned departmental policies, programs, and budgets? |
| ___ | ___ | 9. Proposed MOU/MOA draft in accordance with DOE/NV MOU Preparation and Review Process? |
| ___ | ___ | 10. Funds have not been obligated, committed, or transferred within the proposed MOU/MOA? |
| ___ | ___ | 11. Specific termination date identified for this activity? |

Program Official: _____
Name, Organization, Telephone Number
(Please Print) _____
Date _____

AWARD INFORMATION MANAGEMENT SYSTEM FORM

AWARD INFORMATION MANAGEMENT SYSTEM
ADDITIONS, DELETIONS, AND CHANGES

Contract No. .: _____ Contract Alias: _____
Contract Type: _____ Status: _____ M&O Assigned: _____
Award Date . .: _____ Effective Date: _____ Complete Date: _____

Contract Officer: _____ Technical Reps> _____

Contract Spec. .: _____ Program Office: _____

Contractor Name> _____

Street: _____
City. .: _____ State .: _____ Zip.: _____
POC .> _____ Phone: _____ Fax: _____

Description> _____

Memo> _____

Current Mod. .: _____
Contract Value: _____ Percent Costed: _____
Last DISCAS Update: _____ Obligations. . . : _____
Cost: _____ Uncosted Oblig: _____
Payments. . . . : _____ Unpaid Oblig. . . : _____

Initially Added : _____ by: _____
Last Changed .: _____ by: _____

MEMORANDUM OF UNDERSTANDING (MOU)/
MEMORANDUM OF AGREEMENT (MOA)
TRIENNIAL REVIEW SHEET

NAME: _____
NUMBER: _____

_____ Retain

_____ Terminate

EXPLANATION: _____

Program Official: _____
Name, Organization, and Telephone Number Date
(Please Print)